For Tagore Law Professorship for 1903.

AN INTRODUCTORY LECTURE

ON THE SUBJECT OF

THE RULES OF INTERPRETATION IN HINDU LAW, WITH SPECIAL REFERENCE TO THE MIMÂNSÂ APHORISMS AS APPLIED TO HINDU LAW

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THE INTRODUCTORY LECTURE.

THE interpretation of the Hindu Law on which I propose to lecture, cannot be better introduced than in the language of Sir John Edge, C. J., who, with reference to a question of Hindu Law arising before him, observed :—

"It must clearly be construed according to the rules for the construction of the texts of the sacred books of the Hindu Law, if authoritative rules on the subject exist; that rules for the construction of the sacred text-books of the Hindus do exist, cannot be disputed, although those rules have been overlooked or not referred to by Judges or English text book writers."[1]

The rules of interpretation of the Hindu Law, are perhaps one of the most difficult subjects for a lecturer. The difficulty, however, does not so much arise from a lack of materials on the subject, as from the wide extent of them. No doubt some consider the reverse to be the case. But if one were to look into the large mass of literature on the interpretation of the Vedas, the fountain-head of all Hindu Laws and of the variety of shapes in which, the principles of interpretation, with regard to the Vedas, have been extended to the interpretation of every kind of Sanskrit literary work, he would not perhaps be

[1] 14 All page 70.

inclined to complain of the paucity of materials for discussing the subject of interpretation of the Hindu Law. The earliest works, approaching the subject of interpretation, were the Niruktas, the purpose of which was to explain Vedic terms. The Nirukta by Jâska is the foremost of all Niruktas. Next in order perhaps come the Kalpa Sutras, although the authority of these on questions of interpretation is not admitted by Jaimini. But notwithstanding this, Sutras like those of Ashwâlâyana, Apastamba and others must carry some weight on the subject of interpretation so far as they go. Jaimini takes exception to them on the ground of their being mere rules of application ; and as such, he says that they have no system in them.

असन्नियमात् ।[1]

And further he says that they are not the sequence of Srutivâkyas (Vedic propositions).

अवाक्यशेषात् ।[2]

Jaimini Sutras.

The Jaimini Sutras called Mimânsâ Sutras are decidedly the most comprehensive and prevailing authority on the subject of interpretation. Jaimini's work for the first time reduced the subject of interpretation to what is called Darsana or Philosophy, and in effect may well be regarded as a scientific system of interpretation. Upon the basis of this great work, piles upon piles of Mimânsâ literature by succeeding writers have been heaped. These writers purporting to comment on and explain the Sutras have each made more or less a new departure on some points.

I shall deal with some of the principal writers of this description somewhat at length hereafter. For the present

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1 Jaimini Sutra I. 3. 12. 2 Jaimini Sutra I. 3. 13.

I shall barely enumerate the names of some of the well-known Mimânsâ works following the Jaimini Sutras.

i. The Vritti by Bhagavâna Upavarsa is perhaps the earliest Britti, and now known generally by quotation.

ii. Shabar Bhâsya.

iii. Vartic by Kumârila Swâmi.

iv. The commentary by Guru Prabhâkar often quoted as Guru.

v. Shâstra Dipikâ and Nyâyaratna Mâlâ by Pârtha-sârathi Misra.

vi. Mimânsâ Makaranda. This is a work written by the author of Viswa Gunâdarsa.

vii. Nyâyamâlâ Vistâra by Mâdhavâchâryyâ.

viii. Bhattadipicâ and Mimânsâ Kaustuva by Khândadeva.

ix. Mimânsânyâyaviveka by Bhavanâtha Misra.

x. Nyâyâvali Dipika by Râghavânanda.

xi. Artha Sangraha by Lougâkshi Bhâskara.

xii. Mimânsâ Nyâya Prakâsa by Apadeva.

xiii. Adhikarana Kaumudi by Udichya Vattâchâryya.

xiv. Subodhini Vritti by Râmeswar Suri.

Vijnâneshwar and Jimutvâhana proceed upon the authority of the Mimânsâ Sutras regarding the interpretation of Smritis dealt with by them in their respective works, the Mitâksharâ and Dâyavâga. Then, again, these two great works which between them governed, generally speaking, the whole Hindu nation in matters of the law of succession, themselves in effect lay down a large number of principles of interpretation, which must be authoritative, and which at the same time are not unacceptable to modern sense.

Subsequent Writers.

Again, writers who followed Vijnâneshwar and Jimutvâhana and regarded them as their authority, also developed the principles of Mimânsâ in connection with the subjects dealt with by them. As,

for instance, Raghunandana of Nuddea emphasised and illustrated some important principles of interpretation in course of his great ritualistic works relating to the Achârakânda.

Peculiar importance of the fixed rules of interpretation as regards the Hindu Law.

Rules of interpretation possess an importance in respect of the Hindu Law greater than in regard to any other law. It is for the simple reason that, the Hindu Law has always been more or less independent of the State. A well-known Anglo-Indian writer in speaking of the Mahomedan Law observes that the Mahomedan Law has always been independent of the sovereign power, being under the contrôl of the Doctors of the Islam religion. If this is true with regard to the Mahomedan Law, it is no less so as regards the Hindu Law. A brief history of the vicissitudes through which the Hindu Law had to pass from the dawn of society down to the present time, will at once show, that the Hindu Law is not a State-made law, and that the administration of it was never at the absolute contrôl of the sovereign authority. When the State takes the absolute charge not only of administering the law, but also of making it, questions of interpretation hardly possess any great importance; for, in such a case, whenever any doubt or difficulty arises, it is capable of being easily cut short by the supreme authority of the State either in the shape of legislation or by the fiat of the Judges having ultimate jurisdiction as constituted by the sovereign authority. But when the law is carved out of written religious works, to the authority of which people implicitly submit, and when the administration of such law is left more or less, as it must be, in the hands of men learned in religious books or supposed to be so, the necessity of fixed laws of rules of interpretation necessarily arises, and has naturally a greater importance than in the other case; for, in this case the decisions of the

persons entrusted with the administration of the law are open to discussion on the part of the brothers of the same profession, even if not on the part of the mass of the people.

Now look at the history of the Hindu Law, which is as long as the history of the nation itself. Various are the stages through which the Hindu Law has passed. The first stage of the Hindu Law was the stage at which there was no writing. That during a considerably long period of the Hindu Nation, rather of the Indo-Aryan Nation, writing was unknown, is clearly shown by the terms Sruti and Smriti as applied to the religious tenets and the social rules respectively of this people. Both the terms go to show that the means by which knowledge passed from one generation to another was oral communication. Then what was the difference between the two—the Sruti and the Smriti, hearing and remembering respectively ?

History of the Hindu Law. First stage.

The difference seems to have been this. In the case of the Sruti the matter was embodied in set forms of language mostly in metre, so that the words could be recited and sung. It was altogether a mechanical process. But in the case of the Smritis it appears that what was communicated was the substance of a matter—information and thought—in which language was of no consequence. So the one was a matter of speech and the other was a matter of memory. The one represented the revealed law which admitted of no change, the other the floating traditions of custom and practice, which naturally influenced the conduct of the society. The former was naturally of superior authority to the latter. And as a matter of course when both covered the same ground, the revealed law would prevail over the unrevealed. But there is no doubt that both came down

Difference between Sruti and Smriti respectively.

side by side. This is clear from the fact, that many of the venerable Rishis, with whose names the Srutis are associated, are identical with the names with which Smritis are associated, such as Manu, Atri, Angiras, etc.

In this stage there is every reason to conclude, that the duties which are now done by courts of law, were done by the heads of clans and families *i. e.* the leading men of the Gotras and Prabaras, either by themselves or by getting an umpire selected by the parties. "Let the Heads of the family, or the chief of the society, or the inhabitants of the city or of the village, select an umpire approved by both parties." [1] This was a stage in which the law was forming, their seeds being in the Sruti, which were then as even now regarded as the fountain head of all law.

Second stage.

The second stage of the Hindu Law commences with the introduction of writing. But it cannot be supposed that as soon as writing was introduced, the whole of the Smritis was reduced to writing. They were a floating mass of information, and it would naturally take time to reduce them to systematic written shapes. The Srutis, as meaning the Mantras (hymns), must have been reduced to writing in a much shorter time. But if there was delay in the Smritis being reduced to writing, they and much of the Brahmans found expression in written language, at first in the form of Sutras.

So, this second stage, I shall call the Sutra stage. Prof. Max Muller by his minute researches on the subject has come to the same conclusion that the Sutra period began when the period of the Mnemonic Sanskrit literature ended. He says "we have to begin our study of Indian Philosophy with the Sutras, these Sutras themselves must be considered

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1 Bhrigu cited in the Smriti Chandrika.

as the last outcome of a long continued philosophical activity carried on by memory only." [1]

In this period although the revealed law retained its old name Sruti (heard), it became the written Vedas or scriptures, which were to be read (स्वाध्येय). The Smritis were represented in the written Grihya and Dharma Sutras such as those of Ashwâlâyana, Sânkhyâyana, Gobhil, Âpastamba, Pâraskara, Baudhayana and Vashishta, etc.

But the Sutras, from their very nature, were far from being exhaustive, so they were naturally supplemented by the third grand source of law as declared by Manu *i. e.* custom and usage. So in this period the written law had been half formed and was growing by the addition of customary law. The distinction, however, between the Srauta law and Smârta law was marked enough in this period, as in the subsequent period, the two going side by side with each other.

In this stage along with the Grihya and Dharma Sutras mentioned, the Manu Smriti appeared in the shape of Mânava Sutra. There is no reason to doubt the conclusion of the European scholars that the metrical versions of the several Smritis in their codified forms *i. e.*, in the shape of Samhitâs, were subsequent to the Sutra age. But even in this infant age (Sutra stage) of written law, rules of interpretation had become necessary and had been formulated more or less in the Kalpa Sutras, Ashwâlâyana and the rest already referred to.

In the new development of the society in this stage the principle by which leadership was settled, had undergone some change. To the leadership by reason of being heads of clans and families, was added the leadership by learning as the Vedas had become a subject of learning, having been reduced to writing ; and a class of learned men had been

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[1] The six systems of Indian Philosophy by Prof. Max Muller p. .

formed. Naturally, therefore, in this stage the learned class had a predominant share in the administration of Justice. They, along with the heads of clans and families, and, in the case of villages and towns, with the village-men and townsmen, formed the sources from which the Judicatories were drawn ; the king being also a factor where there was one. "The villagemen, the townsmen, assemblages of families, associations of artisans, and a scholar in the *four sciences*, persons belonging to the same clan, allied families, constituted judges, and the king, [are several judicatories.]" [1]

In this period, the law which the courts, constituted as indicated above, had to administer, was evidently derived not only from the Srutis and the Srauta Sutras and the Grihya Sutras but also from practices and usages such as prevailed in those times. The Srauta Sutras were Sutras which regulated chiefly the acts of worship and sacrifices, and the Grihya and Dharma Sutras, acts relating to domestic duties and duties between man and man.

The third stage, that of codification.

Now we come to the third stage, the stage of Samhitâ or codification. In this stage the Vedic literature as well as the Smriti literature having both been enlarged and amplified, there was the need of classifying and codifying them. Thus the Vedas were embodied in the forms of the Samhitâs and were classified, and their branches were elaborately exhibited. A new departure was also taken in the Smriti literature, from the Grihya and Dharma Sutras to the Samhitâs or institutes which were called the Dharma Sâstra. The Aryan power in the land had extensively increased and many were the peoples and territories which were brought under the Aryan rule. Great kings and great kingdoms had come into existence, and the administration of Justice had become an

[1] Bhrigu cited in the Smriti Chandrika.

important factor in civil life. With these changes a demand for large and comprehensive institutes of law necessarily arose, and this demand was satisfied. The subject of the change from the Grihya and Dharma Sutras to the various Samhitâs or the Dharma Shâstras, has engaged the attention of many European scholars, such as Prof. Max Muller, West and Buhler. They considered the Sutras to be more ancient than the metrical codes. The reasoning by which this view is supported will be found in Max Muller's History of Ancient Sanskrit Literature, pp. 132, 199, 206—208, and his letter printed in Morley's Digest, Introduction.

Scholars have also discussed the question as to whether the Dharma Shâstras as they appear now came into existence as binding treatises explaining the law as it existed at the time, having the same character as the institutes of Justinian, or they were merely literary works in which the social views of distinguished writers were published. The Hon'ble Dr. G. D. Banerjee in his Tagore Law Lecture inclines to the second view and Dr. T. N. Mittra inclines to the first view. Thus these two Doctors differ. It appears from the whole history of the subject, that our Dharma Shâstras would not come under the category of literary productions. They were text-books on law such as Blackstone's Commentary and the like, and had not the force of statutes on the one hand, nor on the other hand were they mere literary productions with no pretence to authority.

Administration of justices in this period.

The more important question in connection with my subject is that of the mode in which the law was administered in this period. It would appear that as the law itself had become elaborate and extensive, so were the machinery of administration and the rules of procedure. There were two sets of courts available to the litigants; firstly, the courts

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constituted directly under the State authority; secondly, the courts of a popular character and constituted by the people themselves. On this subject instead of giving tedious descriptions from the Sanskrit works, I would place here the short description given by Colebrooke. Under the head of State courts would come the following :—

"Places of resort for redress are,

i. "The court of the sovereign, who is assisted by learned Brâhmins as assessors, it is ambulatory, being held where the king abides or sojourns."

ii. "The tribunal of the Chief Judge appointed by the sovereign, and sitting with three or more assessors not exceeding seven. This is a stationary court being held at an appointed place."

iii. "Inferior Judges appointed by the sovereign's authority for local jurisdictions, from their decision appeal lies to the court of the Chief Judge, and thence to the Raja or King in person."

"Under the heads of popular courts would fall the following":—

i. "Assemblies of townsmen, or meetings of persons belonging to various tribes and following different professions but inhabiting the same place."

ii. "Companies of traders or artisans; conventions of persons belonging to different tribes, but subsisting by the practice of the same profession."

iii. "Meetings of kinsmen, or assemblages of relations connected by consanguinity. The technical terms in the Hindu Law books for these three gradations of assemblies are :—i. Puga, ii. Sreni, iii. Kula."

"Their decisions or awards are subject to revision ; an unsatisfactory determination of the 'Kula' or 'family' is revised by the 'Sreni' or company, as less liable to suspicion

of partiality than the kindred; and an unsatisfactory decision of fellow artisans is revised by the 'Puga' or assembly of cohabitants who are less to be suspected of partiality. From the award of the 'Puga' or assembly, an appeal lies, according tc the statutes of the Hindu Law, to the tribunal of the 'Prâd Vivâka' or Judges; and finally to the court of the Râjâ, or Sovereign Prince." [1]

It would seem that the King's court is to be assisted by learned Brâhmins as assessors. The qualifications of these assessors are given at length. Leaving the other qualifications apart it is important to note, that acquaintance with jurisprudence which presumably includes rules of Mimânsâ is one of the qualifications.

"The assessors of the King's court of judicature should be men skilled in jurisprudence, sprung from good families, rigidly veracious and strictly impartial towards friends and foes." [2]

Then again as regards popular courts consisting of assemblies of qualified persons, one member is to be a person who knows the Mimânsâ according to Vasista.

"Four students (of the four Vedas), one who knows the Mimânsâ, one who knows the Angas, a teacher of the sacred law, and three eminent men who are in three (different) orders, (compose) a legal assembly consisting of at least of ten (members)." [3]

The above-mentioned verses are also quoted in Baudhayana.[4]

Thus the paramount importance of a knowledge of the rules of interpretation has been prominently recognized from the earliest times.

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[1] Colebrooke, Miscellaneous Essays, p. 491—2.

[2] 7 Narada I. S. 2. 7. 1.

[3] Vasishta, ch. III. p. 20.

[4] Bauddhyana, Prasna I, Adhyaya I, Kandika I.

In fact the history of the administration of the Hindu Law, so far as we have briefly given it, shows this. And now we might at once proceed to the consideration of the Mimânsâ Sutras as laid down by Jaimini, who evidently addressed himself to that developed state both of the Srauta literature and of the Dharma Shâstras, which was found in the period, called by me the Samhitâ period. But it would be more satisfactory to continue the brief survey of the history of the Hindu Law two steps more, namely the Bauddha period and the Mahomedan period.

Fourth stage : Buddhistic period.

It would appear that in the Buddhistic period there was no revolution in the administrative machinery of the country ; but only the religion of the sovereign and of the administrative authorities was altered. This, no doubt, introduced certain modifications in the rules of administration. It is not very easy to determine the extent of the modifications thus introduced. That Buddhism did not interfere with the Hindu Law and Hindu usages and customs, is shown by the significant fact that the Burmese law-books do, not only profess to be based on the Code of Manu, but they have actually a great number of rules in common with that work. [1]

The great founder of Buddhism never did anything to suppress liberty of thought and action, on the contrary his great object was to promote these, and to teach the doctrine that the mission of every individual was to improve his character and life, untrammelled by the fetters of dogmatism and conventionalism. After his time his followers in true faithfulness to their great master, were inclined to foster, if not to create, representative institutions. Even in settling the doctrines of the State religion, they adopted the principle of

[1] Vide Jolly's Tagore Law Lectures p. 46.

being guided by representative councils. Therefore the existing system of Hindu popular institutions such as, village communities and assemblies had their full play under the Buddhistic rule. But any compilation or digest of Hindu Law, that might come into existence in this period, would naturally imbibe the spirit of the Buddhistic liberalism, and would naturally keep itself more or less clear of the ritualistic dogmas of the Hindu religious books.

But was any such compilation or digest undertaken during the pretty long period of Buddhistic rule? Undoubtedly the King's court and courts subordinate to it, had not ceased to exist during this period, and it is also undoubted that these courts did not ignore the Hindu Law regarding property. Then how did these Buddhistic courts administer Hindu Law? Orthodox Brâhmin assessors could hardly be expected to co-operate with them. These considerations tend to show that there was some digest or compilation of the Hindu Law made in their time, which was more or less free from the characteristic features of extreme Hindu conservatism. It would appear that the Mitâksharâ which was a commentary by Vijnâneshwar on the Yâjnawalka Samhitâ was such a law book.

Mitâksharâ begins by discarding the fundamental principle taught by the Vedas, that property is for the spiritual benefit; and that its devolution depends on considerations of such benefit alone. Then again the tendency shown in the Code of Manu and most of the Samhitâs is to allow free partition and devolution; certainly there is nothing in them to tie up property; but the Bauddhas favouring monastic institutions were naturally partial towards the principle of perpetuity. And the Mitâksharâ too characterises itself by favouring the same principle. Then, again, what can be the reason for the Mitâksharâ becoming

the governing law for almost the whole of India to the exclusion of Manu's Code with able commentaries on it ? This would be hard to understand except by supposing that the Bauddha kings considered Manu's Code to represent orthodox Hinduism in a greater measure than the Yâjnawalka Samhitâ as explained by Vijnâneshwara. They adopted this work for the guidance of their courts throughout their dominions, where it still prevails except in Bengal from which it was displaced by Jimutvâhana, who apparently flourished after the revival of Hinduism. The fact that one of the early commentaries on Mitâksharâ called Subodhini was written by Bisweswara, by the order of Madan Pal, a Bauddha king, whose date is referred to the 14th century, deserves attention.

These are considerations which naturally lead one to think that Vijnaneshwara, the author of Mitâksharâ, might not have been an orthodox Hindu. He was an ascetic (Sanyasi). It is said, he was a disciple of Sankarâchârya, as Colebrooke observes. But there is no certain proof of this. For a Hindu Sanyâsi to write a large book on law is not an usual thing, while a Bauddha Sanyâsi might well do it. However, my justification for entering on this question is, that I shall have largely to consider the principles of interpretation adopted by the Mitâksharâ. And it would help one to understand these principles better if one can form the idea of the circumstances under which the book was written. A few words more are necessary to explain the influence which the Buddhistic rule had upon the Hindu Law and the mode of administering that law.

Agnipurâna is a treatise written after the Bauddha period, for it refers to events connected with Buddhism. Chapters 253 to 258, both inclusive, of this Purâna are devoted to the subject of law, the law courts and judicial proceedings. In chapter 253, (Sec. 31 to 37), the constitution of the courts

is described much to the same effect as they have been described to have been during the period before Buddhism. This shows there had not been much change in this respect during the Bauddha period. But as regards the popular assemblies, it appears that during the Buddhistic rule, their scope and functions had been considerably enlarged and their position more firmly established. This would appear from the following passages in chap. 257, (from sec. 38 to 47) :—

"The man who would rob a public property, as well as the one who would dishonour and violate the decision of the public assembly of his country, should suffer an exile, and all his goods and chattels should be confiscated. All questions of public utility should be submitted to the decision of the public assembly (Samuha Hitabâdi), and their decision shall carry the weight of law. Any one acting in direct contravention of such a decision, shall be liable to a fine. A man deputed on a public errand by a public assembly and gaining anything in connection therewith should deposit the same in the public purse. In the alternative he should be liable to refund to the public exchequer eleven times of its value, if not voluntarily depositing the same."

"The executive committee of such an assembly should consist of men, pure in conduct, and well versed in the Vedas, and who would be above all greed and corruption ; and the assembly should carry out their orders without the least questioning. The same shall hold good in the case of trade guilds, as well as in the guilds of artisans, or in the councils of men professing a religion, other than the established one of the country. The king should maintain the separateness of these trade guilds, and encourage the public assembly of his realm."

It would also appear from this Purâna that almost all the branches of law, had attained a degree of development which

may well compare with the Anglo-Indian law of the present time. The law of property, of contract and mortgage, of torts and crimes, of procedure, evidence, and limitation, all seem to have been understood and settled to a degree, by no means unsatisfactory.

Hence necessarily the rules of interpretation were also placed on a more liberal basis, as will appear from the following passages. In sec. 50 to 52. ch. 253 occurs the following: "A principle of equity should be deemed as a better authority in the conflict of the tenets of law codes on a particular point." The resemblance between the law sections of the Agni Purâna and the Vyavahâra Kânda of Yâjnawalka is striking.

The Mahomedan period.

The fifth and the last epoch of the Hindu Law that I shall briefly notice is that of the Mahomedan rule. Colebrooke observes: "It would be an interesting subject of enquiry to determine how far the Hindu courts and laws were allowed to remain in force during the five centuries and-a-half of Mahomedan predominance throughout India." Unfortunately, however, there is very little of recorded information on the subject. But we have these two significant facts that in the 16th century Dalapati, one of the ministers of the well-known Nizâm Shah dynasty of Ahmednagar, wrote an enormous Digest of Hindu Law called Nrisinhaprasâda; and it also appears that Todar Mal, the able and powerful Hindu Minister of Akbar, wrote a similar Digest of Hindu Law named Todârânanda's Vyavahâra Sâukhyas which contains among other things a chapter on Civil Procedure and the Law of Evidence. A complete manuscript of the former book is preserved in the Sanskrit College Library, Benares, and a manuscript of the first section of the latter book is to be found in the library of the Deccan College, Poona.[1]

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1 Vide Jolly's Tagore Law Lectures.

However, it is clear that the Mahomedan rulers did not interfere with the Hindu Law. "By the original theory of the Mahomedan government" as observed by Elphinstone, "the law was independent of the State or rather the State was dependent on the law." [1] If this was so with regard to the Mahomedan Law, by instinct the Mahomedan rulers would let alone the Hindu Law. Besides it was in no way profitable to them, nay, positively inconvenient and troublesome to interfere with the internal social economy of the Hindus. All they cared for, was the realisation of the revenue, as Sir H. Maine observed. Accordingly they contented themselves with introducing changes in the revenue law of the country.

The Pathan feudal system.

The Pathans in their own country had a system of feudalism greatly resembling that which obtained in mediæval Europe. With their rule that system of feudalism was introduced into India in connection with the revenue system in the shape of the Zemindary institutions. Under the Zemindary system the raiyats were obliged to render certain services and payments to the Zemindars, which are much like the services and payments of the vassals of England to their Lords. The *marocha* was a sum to be paid by a raiyat to the Zemindar on the occasion of a marriage in the raiyat's family. Then what were called the *bhikshas* and *mangans* were contributions to be made by the raiyats on the occasion of marriage, Srâdha and the like in the family of the Zemindar. I need hardly refer to the other *mathuts* and *abwabs*, which are matters of history. As for the raiyats fighting for the Zemindars, the magistrates of the present day have not yet been able to completely eradicate the practice. The Zemindars under the Pathan rule were much like the barons of the mediæval age. And the

[1] Elphinstone's History of India, p. 484.

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Zemindars had their courts, which were like the courts of the barons of England. The effect of this change was that, the popular assemblies which we have seen to have existed down to the end of the Hindu period fell into disuse. But yet the village assemblies and village communities remained.

The administration of the Hindu Law in simple cases, was in the hands of the village communities, while in complicated questions, the parties generally used to state their cases before any distinguished Pundit or college of Pundits, whose decision was accepted by them.

The Moghal System.

With the Moghul conquest and the extension of the Mahomedan dominions, two other distinct classes of tribunals arose: "those," to quote the words of Elphinstone,[1] "of the Cazis which recognised the Mahomedan Law alone, and which acted on application and by fixed rules of procedure, and those of the officers of government whose authority was arbitrary and undefined."

The highest court was "composed of an officer named Mir Adl (Lord Chief Justice) and a Cazi. The latter conducted the trial and stated the law; the other passed judgment and seems to have been the supreme authority."[2] But the cases decided by this tribunal were generally cases between Mahomedans, as also cases between Hindus relating to contracts and torts. As regards questions involving principles of Hindu Law, they were left to the Hindus themselves who got them settled by Pundits or colleges of Pundits as stated above. As regards Emperor Akbar, he followed more the Hindu religion than the Mahomedan religion. Consequently he allowed no sort of interference with the Hindus. The few measures that he adopted with regard to the Hindus

[1] Elphinstone's History of India p. 484.
[2] Do. do. do. p. 544.

were no more than what a wise Hindu ruler would have done, *i.e.*, the prohibition of trial by ordeal, etc.

No doubt, questions of Hindu Law would sometimes be brought before the Dewans or local revenue officers. The Dewani courts, however, dealt primarily with revenue questions, but in special cases where the Dewan was a Hindu, he probably took cognisance of questions of Hindu Law and got them settled by taking the opinions of Pundits.

The Mimansa rules not a dead letter.

The summary history of the fortunes of Hindu Law given above, clearly shows, that the duty of interpreting the Hindu Law was always in the hands of Brahmins conversant with that law, and they, in order that their decisions might carry weight, were ever bound to follow fixed principles of interpretation, mainly deriving those principles from the highest authority on the subject—the Mimânsâ Sutras. Therefore the Mimânsâ rules have never been a dead letter. They were living principles down to the end of the Mahomedan rule. The Mimânsâ Sutras furnish a complete code of rules for the construction of the Hindu Law.

In fact, the principles of construction contained in the Mimânsâ Sutras, are applicable to the construction of any system of law, ancient or modern, and can be extended to the interpretation of contracts and deeds. I hope to make this sufficiently clear by an examination of the Sutras. The Mimânsâ Darsana presents the subject of interpretation of written matter in a scientific shape. The late Prof. Max Muller in his book on the six systems of Indian Philosophy says [1]:—"We may wonder why Purva-Mimânsâ should ever have been raised to the rank of a philosophical system by the side of the Uttar-Mimânsâ and Vedânta, but it is its

[1] Vide p. 275.

method rather than the matter to which it is applied, that seems to have invested it with a certain importance. This Mimânsâ method of discussing questions has been adopted in other branches of learning also, for instance by the highest legal authorities in trying to settle contested questions of law. We meet with it in other systems of philosophy also as the recognised method of discussing various opinions before arriving at a final conclusion." Regarding the mode of procedure followed by the Mimânsâ Darsana and its bearing on the subject of Judicial interpretation, Mr. Colebrooke says as follows :[1] "A case is proposed either specified in Jaimini's text or supplied by his scholiasts. Upon this a doubt or question is raised, and a solution of it is suggested, which is refuted and a right conclusion established in its stead. The disquisitions of the Mimânsâ bear therefore a certain resemblance to judicial questions; and, in fact, the Hindu Law being blended with the religion of the people, the same modes of reasoning are applicable, and are applied to the one as to the other. The logic of the Mimânsâ is the logic of the law—the rule of interpretation of civil and religious ordinances. Each case is examined and determined upon general principles; and from the cases decided the principles may be collected. A well-ordered arrangement of them would constitute the philosophy of the law, and this is, in truth, what has been attempted in the Mimânsâ."

The whole procedure consists of five steps :—

The first is the text or passage which is the subject of interpretation, it being capable of two or more meanings. It is called Bishaya.

The second step is the doubt regarding its meaning, the

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[1] Colebrooke's Miscellaneous Essays, Vol. I. p. 342.

doubt being as to which of the two or more meanings is the correct meaning. This is called Samashya.

The third is the postulation of some one probable meaning with a view to test how far that meaning stands the test of reasoning. This is called Purva Paksha.

The fourth is the refutation of the suggested meaning. It is called Uttaran.

The fifth and last is the establishment of the true meaning. This is called Nirnaya. The whole of this process is called an Adhicarana signifying a complete process.

विषयो विशयश्चैव पूर्व्वपक्षस्तथोत्तरम् ।[1]
निर्ण्णयश्चेति पञ्चाङ्गं शास्त्रेऽधिकरणं स्मृतम् ॥

Colebrooke explains Adhikarana as follows:—A complete Adhikarana or case, consists of five members, viz.:

I. The subject or matter to be explained.
II. The doubt or question arising out of that matter.
III. The first side or *prima facie* argument concerning it.
IV. The answer or demonstrated conclusion (Sidhânta.)
V. The pertinence or relevancy.[2]

This process of interpretation is unobjectionable. It gives a prominent place to the view opposed to what is eventually adopted by way of conclusion, which by this method acquires a greater clearness and strength than otherwise would have been the case. This mode of argumentation, consisting of Purva Paksha or *prima facie* argument, the Uttara or the refutation of it, and then the Sidhânta or conclusion, is peculiar to the Hindu literature. It pervades all Sanskrit discursive works. The system of Adhikarana has been followed in Uttara Mimânsâ or Vedânta. An Adhikarana is also called Nyâya.

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[1] Bhatta. [2] Colebrooke's Miscellaneous Essays, p. 326.

Dr. Buhler thinks that formerly Purva Mimânsâ was called by the name of Nyâya, and that latterly it was applied to the Gautama system of logic. You have seen that the logic of Mimânsâ is the logic of law, as Colebrooke has put it. Thus there is no wonder that the same word Nyaya is applied to a legal thesis, as to a thesis of formal logic. In both cases, an Adhikarana consists of five parts. You have seen the parts which constitute a Mimânsâ Adhikarana, and according to Gautama Logic, a syllogism also consists of five members. There is, however, this great difference that in logic the conclusion is arrived at, firstly, by affirming a general proposition of fact, and then showing that the particular proposition in question is covered by that general proposition. But in a Mimânsâ Nyâya the basis of solution is either the authority of the Sruti or of principles enunciated in the Smriti, which are not inconsistent with the Sruti or the authority of Shistâchâra (*i.e.*, usages prevailing among good men). It would be seen that arguments resorted to in courts of law are based on the same grounds. And as in a court of justice when the judge comes to a decision on a point of law from premises partaking of the nature of law, custom etc., his decision becomes a settled principle of interpretation, when a similar question arises; so the Siddhânta arrived at by Jaimini in each Adhikarana of his book upon the particular question raised in that Adhikarana, furnishes the general principles of interpretation, which would apply to all questions of a similar character, although the subject-matter in relation to which the conclusion is arrived at, may be different from that in connection with which the new similar questions may arise.

Adhikarana identical with Nyaya.

Many of the Mimânsâ Nyâyas have got proper names given to them. They are usually named after some word or

phrase occurring in the Bishaya or subject-matter of the Adhikarana or the Purva Paksha of the particular case with which the principle of the Nyâya originated, just as many leading principles of judicial decision go by the names of the parties to the case in which the decision was passed.

Now, having understood what an Adhikarana or Nyâya is, you will be áble to appreciate such names in some of the Mimânsâ Books as Nyâya Ratna Mâlâ, Nyâyâvalididhiti, Nyâyamala Vistâra, etc. Looking to the character of the remarks made by Colebrooke and Sir John Edge C. J., already referred to, regarding the nature of the Mimânsâ Darsana, and also of the process of investigation as just explained, one may not be inclined to raise the question how the Mimâmsâ Darsana, which purports to interpret the sacred texts of religion can be profitably applied to the interpretation of the practical questions of civil law. But I am afraid that this question shall continue to be raised by many; so it is necessary that the question should be answered fully in this place.

How Mimansa principles applicable to civil law.

The answer in the first place is, supposing that the object of the Mimânsâ Darsana is confined to an investigation of spiritual duty and of the spiritual law imposing that duty, the definition of what is spiritual duty and spiritual law as given by the Mimânsâ Darsana, is entirely analogous and similar to that of legal duty and positive civil law. Mr. Austin defines law as follows: "A law is a command which obliges a person or persons, and obliges generally to acts or forbearances of a class." "In language more popular but less distinct and precise a law is a command, which obliges a person or persons to a course of conduct."

Now, look at the definition given by Jaimini of Dharma, the investigation of which is the object of his book.

चोदनालक्षणोऽर्थोधर्मः । [1]

"What is to be done as characterised by a command is duty (धर्म्म)."

Colebrooke translates the first three Sutras thus [2]:—"Now then, the study of duty is to be commenced. Duty is a purpose which is inculcated by a command. Its reason must be enquired." No doubt there is this difference between Jaimini's definition and Austin's, that the one defines duty or obligation imposed by law, while the other defines the law imposing the duty. But law and legal duty are counterparts of each other.

That the word "चोदना" means command admits of no doubt. Pârtha Sârathi Misra explains Dharma to be the object of a command. This idea of divine command forms the marrow of the Hindu religion. In Gayatri, the essence of the Vedas, the word चोदना occurs with the prefix प्र, as the governing element of the whole of it; धियो योनः प्रचोदयात् by Whom our thoughts must be commanded. The word अर्थ (Artha), in the Jaimini's definition above quoted, means the aim or object towards which one must tend. And when that aim or object is characterised or influenced by a command it becomes duty. Says Austin:—"It also appears from what has been premised, that command, duty, and sanction are inseparably connected terms; that each embraces the same ideas as the others, though each denotes those ideas in a peculiar order or series," thus Austin's definition and Jaimini's definition entirely agree. It has only to be shown now that, as according to Austin, the command must be a command having sanction or guarantee for its enforcement, Jaimini's चोदना has a like

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[1] Jaimini, I. I. 2. [2] Colebrooke Miscellaneous Essays, p. 327.

sanction and guarantee. According to Austin, the sanction must consist of a fear of some evil to be inflicted in case of non-compliance with the command. But this view is not shared in by Bentham, the venerable father of jurisprudence. Mr. Austin himself says: "By some celebrated writers (by Locke, Bentham, and Paley) the term sanction or enforcement of obedience, is applied to conditional good as well as to conditional evil; to reward as well as to punishment."

There is clearly a sanction in चोदना (command) as used by Jaimini. By what he says in the third Sutra, he says in effect, that what constitutes the authoritativeness of चोदना must be examined, or in other words, he goes on to examine the sanction contained in it. In the fifth Sutra he explains the sanction thus:—

औत्पत्तिकः तु शब्दस्य अर्थेन संबन्ध. तस्य ज्ञानम् उपदेशः अव्यतिरेकः च अर्थे अनुपलब्धे तत्प्रमाणं बादरायणस्य अनापेक्षत्वात् ।

"It consists of the fact that an intelligent communication of the impulse arising from the association of the eternal word with sense is unfailing in producing effects not yet realised."[1] He goes on to say that this is the sanction of चोदना as बादरायण has not ignored it. It is, in fact, the certainty of obtaining eternal bliss not otherwise obtainable, by compliance with चोदना (command). This unrealised promised bliss is called Apurva, which in short is a reward beyond the reach of ordinary human efforts. Colebrooke puts this matter thus: "The subject which most engages attention throughout the Mimânsâ, recurring at every turn, is the invisible or spiritual operation of an act of merit. The action

Command and sanction in Mimansa.

[1] Jaimini, I. I. 5.

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ceases, yet the consequence does not immediately ensue ; a virtue meantime subsists, unseen, but efficacious to connect the consequence with its past and remote cause, and to bring abcut at a distant period, or in another world, the relative effect. That unseen virtue is termed Apurva, being a relation superinduced, not before possessed."

The prime command or the main Utpatti Vidhi of the Vedas is स्वर्गकामो यजेत्. "One must pray and sacrifice for a heavenly life." The word Swarga does not mean any local heaven but the supreme state of bliss hereafter. This is explained by the Mimânsâ writers, among others by the author of the Mimânsâ-Kaumudi.[1] And the word यजेत् does not itself mean the doing of any external act, but an earnest effort आरम्भ. See Sutra 5. ch. 1. book 2.

चोदना पुनरारम्भः ।

Thus an earnest effort to comply with the prime command is productive of eternal bliss. But the question may be asked, what is the necessity for the performance of external ceremonial acts in the shape of Yajna, how does the transcendental sanction Apurva, attach to such ceremonial acts ? The author in answer to this question says :—

भावार्थाः कर्मशब्दाः तेभ्यः क्रिया प्रतीयेतैषह्यर्थो विधीयते ।[2]

"The ideal realisation (of the command) is (effected by means of words denoting action). From them proceed (external) acts, so those also constitute realisation (of the command.)"

Thus, when a command of the Vedas स्वर्गकामो यजेत् is realised ideally, verbally and by action, there is an unfailing and unprecedented efficacy which is the warrant or sanction of the command.

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[1] Vide Viswajit Adhikarana. [2] Jaimini II. 1. 1.

In fact, to use the second person instead of the third, स्वर्गकामो यजेत् means, "thou shalt pray and sacrifice for a heavenly life and then thou shalt have it."

One may not believe in this. But that is immaterial to the question. It is clear the Mimânsâ claims a sanction for the Vedic command, though it is, unlike the command, secured by the force of the bayonet.

"One must sacrifice and pray in order to obtain heavenly bliss" is, as understood by the Hindus, as much a law as one must take the oath of fealty to the Government of a country, in order to obtain the rights of citizenship under that Government. Thus the analogy between the divine law which the Mimânsâ Darsana interprets, and the civil law as contained in the Smritis, is full and complete. So there is no reason for hesitation in accepting the principles of interpretation contained in the Mimânsâ Sutras, as applicable to the Hindu Law as it obtains in the courts of law.

Hermeneutics and Mimansa compared.

The Mimânsâ system of interpreting the Vedas, is not like the system adopted by Christian theologists for interpreting the Bible. This is a system known by the name of hermeneutics. It is an effort to reduce to a systematic shape the various forms of interpretation adopted by Christian theologists. The great difference between the hermeneutics and the Mimânsâ Darsana is this :—The interpreters of the Bible do not so much look to the words of the Bible for interpretation as to the supreme moral force from which they proceeded. This system, in fact, goes beyond the words to elicit their meaning. The Mimânsâ, on the other hand, absolutely looks to the words of the Vedas, and to the words alone for their meaning. The Mimânsakâs start with the words and then follow out their consequences. This constitutes the main difference between the systems of interpretation

adopted by the Hindus and the Christians respectively of their sacred books. In fact, the Mimânsâ system is identical with the judicial principles of interpretation.

The second answer to the question, why should the rules of interpretation of the divine law apply to the interpretation of the civil law, is that the Hindu system recognises no difference between the divine and the civil law. Accordingly, Colebrooke says, as already quoted, "in fact the Hindu Law being blended with the religion of the people, the same modes of reasoning are applicable, and are applied to the one as to the other."

You will see that the definition given by Jaimini of Dharma (duty) is general. What constitutes it is, simply Artha—an object characterised by a command. It includes spiritual duty as well as the civil duties of life. As we have "for heavenly bliss practice Agnihotra" (स्वर्गकामो अग्निहोत्रं यजेत) in the Vedas, so we have "speak no falsehood" (नानृतं वदेत्) in them. In fact, Jaimini devotes one entire chapter (1 bk. 3 ch.) to the subject of law outside the Srutis, the Smritis being the chief in it. No doubt, the Smriti laws are said to derive their authority from the Sruti law, but all the same they are laws and the obligations imposed by them are no less the subject of Jaimini's work than the obligations directly imposed by the Vedas. The chapter referred to opens with the objector's suggestion

धर्मस्य शब्दमूलत्वात् अशब्दं अनपेक्षं स्यात् ।[1]

that "as duty is based on the command of the Vedas, what is not such a command must be ignored." The answer is

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[1] Jaimini, I. 3. 1.

अपि वा कर्तृसामान्यात् प्रमाणम् अनुमानं स्यात्। [1]

"from the presence of a common hand in both (the Srutis and the Smritis) the authority of the Smritis must be presumed." In other words, the acts prescribed by the Smritis are, generally speaking, presumably Dharma; which, in this case, is civil and legal duty.

The author goes on to discuss in full the conditions and limitations under which the presumption in favour of their authority, is to be made. The first condition is, that a rule outside the Vedas in order to be binding as law, must not be in conflict with the Vedas. That, it is only in the absence of such conflict, that the presumption in favor of the authority is to be made. This is said in Sutra 3, of the said chapter:

विरोधे तु अनपेक्षं स्यात् असति हि अनुमानम्। [2]

However, as regards customs and usages the presumption in favor of authority is very much unrestricted.

अपि वा कारणाग्रहणे प्रयुक्तानि प्रतीयेरन्। [3]

Usages.

"Those (rules) which have been reduced to practice and use, must be deemed to be valid without any reference to the reasons thereof." The commentators extend this principle to include the principle of accepting words in their customary sense. But I should not go here into the details of Jaimini's treatment of the Smriti law and customary law. What has been above stated is enough to show the unsoundness of the objection that Jaimini's rules of interpretation should not apply to the rules of interpretation of the civil law.

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[1] Jaimini, I. 3, 2. [2] Jaimini, I. 3. 3. [3] Jaimini, I. 3. 7.

Further, I should point out that the authority of the Mimânsâ principles, on questions of interpretation of law has been recognised from ancient times, for instance, Apastamba and Bau lhâyana both follow the Mimânsâ principles on several occasions, *e. g*, in deciding the question, whether the eldest son should get a larger share of the inheritance, which was a question on which they differed and on which both referred to the same Srutis. Vasista also mentions Mimânsâ, and what is more important, Jimutavâhana, the author of Dâyabhâga, and Vijnâneswar, the author of Mitâksharâ, both appeal to the Mimânsâ Sutras on certain points of importance and, in some cases, where the views of the two authors did not agree. I shall have to deal with the passages hereafter.

Mimansa authority recognized.

Medhâtithi, Aparârka, Raghunandana and others also refer to Mimânsâ principles. On this point Colebrooke observes as follows :—

"Instances of the application of reasoning, as taught in the Mimânsâ, to the discussion and determination of judicial questions, may be seen in the two treatises on the law of inheritance translated by myself, and as many on adoption, by a member of this Society, Mr. J. C. C. Sutherland. (See Mitâksharâ on inheritance 1. 1. 10 and 1. 9. 11 and 2. 1. 34; Jimutvâhana 11. 5. 16—19; Datta Mimânsâ on adoption, 1. 1. 35—41 and 44. 65—66, and 6. 6. 27—31. Datt Chand 1. 224 and 2. 2. 4)."

Above all, the binding character of the Mimânsâ rules, in matters of interpretating the Hindu law, has been judicially recognised in the clearest terms. In the case of Beni Prasad *versus* Hardoi Bibi I. L. R. 14 All. p. 67 as noticed at the outset of this lecture, Chief Justice Sir John Edge says: "The question is how the text of Vasista is to be construed.

It must clearly be construed according to the rules for the construction of the texts of the sacred books of the Hindu Law if authoritative rules on the subject exist. That rules for the construction of the sacred texts and law of the Hindus do exist cannot be disputed, although those rules have been frequently overlooked or not referred to by Judges or English text writers, probably because they are in Sanskrit and have, so far as I am aware, not yet been translated. That they are rules of the highest authority is obvious from the manner in which they have been referred to by Mr. Colebrooke. Mr. Mandalik also vouches for them and so does Golâp Chandra Shâstri in his Hindu Law of adoption. (Tagore Law Lecture of 1888). These rules of construction are to be found in the Mimânsâ of Jaimini. Jaimini, as we have been informed by counsel in the course of argument, lived in the thirteenth century of the Christian era.[1] He was consequently subsequent in date to the Mitâksharâ and anterior in date to the Dattaka Mimâmsâ, and the Dattaka Chandrika, a fact which in my opinion has some bearing on the question which we have to consider, particularly if we find that those rules are consistent with the construction put by the author of Mitâksharâ upon the text of Vasista, and that in commenting upon that text, the authors of the Dattaka Chandrikâ and of the Dattaka Mimânsâ ignored the rule of the Mimânsâ of Jaimini."

Fonr Preliminary topics.

Before proceeding to discuss the principles by which the difficulties in the matter of interpretation are solved according to the Hindu authorities, notedly the Mimânsâ Darsana, I shall deal with a few more preliminary topics.

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1 There is little foundation, however, for this information by counsel.

These topics as treated by Jaimini are :—

(1) The consideration of what are the concomitants of the rules of imperative law ;

(2) The divisions and the classifications of law ;

(3) The various means by which the rules of law are made out and established ;

(4) The modes and methods by which references of one rule of law to another and inter-references between them are carried out in practice.

Jaimini's analysis of the contents of the Vedas.

As regards the first, Jaimini's analysis of the contents of the Vedas corresponds to an analysis that a lawyer might make of the contents of a statute book. A lawyer would divide a statute book into four parts :—

(i) The bare propositions or formulæ of what is intended to be the imperative or the commanding rules.

(ii) The statements showing the reason or the importance or the desirability of the imperative rules—such statements being put either in the shape of preambles or being incorporated into the propositions constituting the commanding rules and forming parts thereof.

(iii) Statements and propositions defining or explaining matters contained in the imperative rules or collaterally relevant to them.

(iv) Rules and descriptions, in way of bye-laws, as regards the manner in which the imperative rules are to be applied to particular cases.

Jaimini reads the Vedas as a code of divine law and nothing more. He divides its contents into four parts as follows, corresponding with the above four-fold divisions :

(i) The Vidhis.

(ii) The Arthavâdas.

(iii) The Nâmadheyas.

(iv) The Mantras in the limited sense of rules of application.

He makes another cross division of the Vedas according to tradition into the Mantras and Vidhis, on the one hand, and on the other, the Brâhmanas.

But leaving this traditional division apart for the present, the four classes of the first division may be explained as follows:

(i) The Vidhis are the commanding rules, of which the leading one together with its sanction, is discussed in the first chapter of the first book.

Utpatti Vidhi.

This leading or primary Vidhi is called the Utpatti Vidhi. It is स्वर्गकामो यजेत "one must pray and sacrifice for a heavenly life." It does not specify in what shape the prayer or sacrifice is to be made. It is a mere abstract command. It is characterised as Bhâvârtha (भावार्थ) in the second Sutra of chap. II already quoted, which means that it fulfils desire for spiritual bliss. But the Sutra just referred to explains that this Utpatti Vidhi cannot stop here. It leads to some specific action which becomes its accessory or Shesha (शेष:). As for instance

स्वर्गकाम: अग्निहोत्रं जुहुयात् ।

Here अग्निहोत्र is added to the Utpatti Vidhi as its Sesha or accessory. Similarly

स्वर्गकामो दर्शपौर्णमासौ यजेत ।

is also another Vidhi of the same character. All such Vidhis are called Samânas (co-ordinates) under the common Utpatti Vidhi. Shesha or its accessory is defined in the first chapter of the third book and is according to Jaimini, action producing fruits as being subsidiary to the primary Vidhi.

शेषः परार्थत्वात् ।[1]

कर्मण्यपि जैमिनिः फलार्थत्वात् ।[2]

I have entered into this minute examination of the Utpatti Vidhi, because it is the keystone to the whole fabric of the Vedic law as Jaimini takes it. It corresponds to what is called "object and reason" in modern language of any given piece of legislation in these days. It shows that the object and reason of the Vedic law is securing a spiritual bliss, or as it is more modestly expressed with reference to one of the present schools of Hindu law, securing a spiritual benefit. Modern writers on the Mimânsâ points it out more clearly. Both Apadeva in his Mimânsâ Nyâya Prakâsha and Laugâkshi Bhâshkara in his Mimânsâ Artha Samgraha explain Vidhi to be that which provides for obtaining in the shape of spiritual benefit what is not otherwise obtainable.

विधिः प्रयोजनवन्तम् अप्राप्तार्थं विधत्ते ।[3]

The word **प्रयोजन** used here has been explained to mean **वैदेन प्रयोजनम्** i. e., spiritual benefit. The subject of **निषेध** or prohibitory injunctions, being in principle the same with the positive injunctions, needs hardly any separate consideration in this place. Later Mimânsâ writers such as Laugâkshi Bhâshkara and others, however, deal with the subject of **निषेध** as a distinct category. Laugâkshi Bhâshkara says, "By prohibition Nishedha we understand sentences turning off man (from some action); for, the purpose of sentences of prohibition lies exclusively in their effecting (man's) turning away from actions which would be the cause of some disadvantage. The details are as follows. In the same manner as an in-

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[1] Jaimini Sutra III. i. 2.

[2] Jaimini Sutra III. i. 4.

[3] Vide Mimansa Nyaya Prakasha, Jibananda Vidyasagara's edition p. 13.

junction conveying an instigation in order to give effect to its instigatory power intimates that the thing enjoined f. i., the sacrifice, is the instrument for obtaining some desired result, and thereby instigates the person towards it, in the same manner a prohibitory passage as f. i. "he is not to eat kalanja," conveying the idea of turning off, (from some action) in order to give effect to its power of turning off, intimates that the thing prohibited as f. i., the eating of kalanja, is the instrument of bringing about some highly undesirable result and thereby turn man off from it."[1] So much as regards Vidhis, the first of the three categories of the contents of the Vedas.

Arthavada.

The second class of its contents are the Arthavâdas. These are affirmative statements showing the importance of the benefit of any particular commanding rule (Vidhi) being incorporated with the Vidhi itself and thus forming a complete sentence with it. This topic is dealt with in the second chapter of the first book which opens with the opponent's suggestion that as the Vedic law imports impulse to action passages, which lack in such import, must be transitory.

आम्नायस्य क्रियार्थत्वादानर्थक्यमतदर्थानाम् तस्मादनित्यमुच्यते ।[2]

The author answers this as follows :—

विधिना त्वेकवाक्यत्वात् स्तुत्यर्थेन विधीनां स्युः ।[3]

"(Many of) such passages being part and parcel of the proposition of a Vidhi, by their sense they must be praise of a Vidhi." Then the author says that "they are of equal authority, being concomitants."

तुल्यञ्च साम्प्रदायिकम् ।[4]

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[1] Dr. Thibaut's Translation of the Artha Samgraha by Laugakshi Bhaskara, p. 39.

[2] Jaimini Sutra I. ii. 1. [3] Jaimini Sutra I. ii. 7. [4] Jaimini Sutra I. ii 8.

Thus, it will be seen that the term Arthavâda has a specific meaning. It is not an explanation or a definition. It will be seen presently that the definition or explanation comes under the head of Nâmadheya, which is the next topic to be discussed. It has been shown that the obligation or duty imposed by a Vidhi is not an infliction devoid of benefit to those who comply with it. There is benefit अर्थे in it. But the duty must be done, not with a view to the benefit, but on account of implicit submission to the command imposing the duty. This is very clearly explained by the author, in the second and third Sutras of the fourth book. Now, by the Sutras above quoted, Jaimini makes two things necessary for an Arthavâda : First, that by its form directly and constructively it should be part and parcel of the proposition laying down the Vidhi. Secondly, that it should by its sense be a laudation of the benefit (अर्थ) to be conferred by the Vidhi. Thus it virtually comes to correspond, to what in our modern statutes constitutes an explanation of the relief or benefit intended to be conferred by a law, with this difference that in our modern law it is put in the shape of a preamble, whereas in the Vedas it is usually incorporated with the Vidhi itself. An Arthavâda is dependent on a Vidhi, but the Vidhi is independent of it. An Arthavâda is no doubt an affirmative sentence, but every affirmation is not an Arthavâda, as is sometimes supposed. An affirmative clause which extends a Vidhi in respect of details, is a Prakarana and not an Arthavâda.

A clause restricting the operation of a Vidhi, that is, which is in the nature of a proviso, would be called by the Mimânsakâs पर्य्युदास (qualified prohibition). In fact, an Arthavâda must be taken in the restricted sense laid down by the Sutras quoted above. Colebrooke has the following upon the subject. "It becomes a question which the

Mimânsâ examines at much length, whether those passages of the Vedas, which are not direct precepts, but are narrative, laudatory or explanatory are nevertheless cogent for a point of duty. In this enquiry is involved the further question, whether the consciousness of the scope of an act is essential to its efficacy for the production of its proper consequence. The Mimânsâ maintains that narrative or indicative texts are proof of duty, as concurrent in import with a direct precept. There subsists a mutual relation between them. One enjoins or forbids an act, the other supplies an inducement for doing it or for refraining from it. "Do so because such is the fruit." The imperative sentence is nevertheless cogent independently of the affirmative one, and needs not its support. The indicative phrase is cogent, implying injunction by pronouncing benefit." [1]

Namadheya.

The third class of the contents of the Vedas as mentioned by Jaimini fall under the name of Nâmadheya, which are treated in the fourth chapter of the first book. From a consideration of the whole of this chapter it appears that Nâmadheyas are statements of definitions and explanations of matter contained in a Vidhi or of collateral matters relevant to them, not being of the nature of an Arthavâda.

The explanation given by Jaimini of Nâmadheya is shortly the following :

अपि वा नामधेयं स्याद्यदुत्पत्तावपूर्व्वमविधायकत्वात् । [2]

"Nâmadheya is that which does not formulate the spiritual benefit अपूर्व्व contained in the Utpatti Vidhi."

Thus "उद्भिदा यजेत पशुकामः, चित्रया यजेत पशुकामः श्येनेन अभिचरन यजेत, These passages and the like are Nâma-

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[1] Colebrooke's Miscellaneous Essays p. 536. [2] Jaimini Sutra I. iv. 2.

dheya, because they do not aim at spiritual benefit. But this is not enough for the author to distinguish the above passages from a Vidhi. The author further says, they are merely propositions of fact meant to explain what men, whose desires are brutish, would do. And then it appears that the author means to say that they have a bearing upon the main Utpatti Vidhi in pointing it off by contrast, and thus forming a precept of its qualities. In short, he takes the statements to be definitions of practices known by the proper names of Udbhida, etc.

यस्मिन् गुणोपदेशः प्रधानतः अभिसम्बन्धः ।

"The instruction contained in them bears upon the main Vidhi." Then again a passage like अग्निहोत्रं जुहोति is also a Nâmadheya because it is a mere nomenclature. Classification, metaphorical illustration, etc., are also Nâmadheyas. The author also considers the probability that in some cases it may be very difficult to distinguish a Nâmadheya from an Arthavâda but he lays down the rule of solving such a difficulty.

संदिग्धेषु वाक्यशेषात् । [1]

Where there is a doubt (whether a sentence is Nâmadheya or Arthavâda) it should be decided with reference to the question, whether the passage is the concluding part of a Vidhi, meaning, that where it is so, it is an Arthavâda. In the discussions of subsequent writers the distinction between Arthavâda and Nâmadheya is hardly kept up. In fact, practically Nâmadheyas are indiscriminately treated as Arthavâdas.

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[1] Jaimini Sutra I. iv. 3. [2] Jaimini Sutra I. iv. 29.

One word more in connection with the classification of the contents of the Vedas, and this with reference to the other cross division into the Mantras and Brâhmanas. The consideration of this classification would incidentally dispose of the question of the rules of application which the Mantras constitute by way of bye-laws.

Mantras and Brahmanas.

On the object of this division Colebrooke has the following: "The Veda, received as holy by orthodox Hindus, consists of two parts, prayer and precept (Mantra and Brâhmana) Jaimini has attempted to give a short definition of first adding that the second is its supplement; "whatever is not Mantra is Brâhmana." The ancient scholiast has endeavoured to supply the acknowledged defect of Jaimini's imperfect definition, by enumerating the various descriptions of passages coming under each head. Late scholiasts having shown that every article in the enumeration is subject to exceptions; and the only test of distinction finally acknowledged is admission of the expert or acceptance of approved teachers, who have taught their disciples to use one passage as prayer, and to read another as a precept. Jaimini's definition and his scholiast's enumeration serve but to alleviate "the task of picking up grains." [1]

However the division of the Vedas into Mantras and Vidhis on the one hand and Brâhmanas on the other, is not of essential importance to the general subject of interpretation. But a general knowledge of this division is required in order to understand Jaimini's Sutras fully. Such general knowledge is derived sufficiently from the Sutras themselves. Jaimini puts the suggestion of the opponent thus :—

विधिमन्त्रयोरैकार्थ्यमैकशब्द्यात् । [2]

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[1] Miscellaneous Essays p. 333. [2] Jaimini Sutra II. i. 28.

"Vidhis and Mantras have the same import for they proceed from the same eternal word."

Jaimini's answer is

अपि वा प्रयोगसामर्थ्यात् मन्त्रोऽभिधानवाचीस्यात् । [1]

"But as the force of the Mantras bears on matters of application, they are of the nature of declarations."

तच्चोदकेषु मन्त्राख्या । [2]

"That which excites the practice or the application is Mantra."

Thus according to Jaimini, Mantras and Vidhis though intimately connected with each other as proceeding from the same eternal word, the one is चोदना, the command of a duty, the other stimulates the application or observance of a command ; in other words Mantra stimulates the practice of duty.

The Brâhmanas on the other hand are stated to be the residuary parts of the Vedas.

शेषे ब्राह्मणशब्दः । [3]

"The Brâhmanas form all the rest of the Vedas excluding the Mantras and Vidhis." Thus, it is clear that the Mantras are either of the nature of Viniyoga Vidhis, or are what are called Niyamas. They would also be simple Arthavâdas when forming part of the same proposition with a Vidhi. In their character as Arthavâda they have been referred to in the second chapter of the first book, which treats of Arthavâda.

The Brâhmanas on the other hand would generally include Nâmadheyas as well as Arthavâdas, and also such incidental

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[1] Jaimini Sutra II. i. 29. [2] Jaimini Sutra II. i. 30.
[3] Jaimini Sutra II. i. 31.

Vidhis as Adhikâra Vidhis and Proyoga Vidhis, which will be explained hereafter.

In the next place I proceed to consider the subject of the classification of Vidhis. The first classification is with regard to their force and character. It is this :—

Classification of Vidhis.

(1) Vidhi proper (imperative command).

(2) Niyama (regulatory command).

(3) Parisankhyâ (rules in the nature of recommendations).

To quote the sloka by Bhatta

विधिरत्यन्तमप्राप्तौ नियमः पाक्षिके सति ।
तत्रचान्यत्र च प्राप्तौ परिसंख्येति गीयते ।

"A (spiritual) Vidhi proper is that, the sanction (Pramâna) of which is not absolutely attainable by sensual efforts."

It is in fact an imperative command addressed to the spiritual part of man with super-sensuous compulsory consequences, that is, super-sensuous sanction.

Such as "Swargakama Yajeta" meaning "Thou shalt pray and sacrifice for a heavenly life and then thou shalt have it."

Niyama is a direction, the sanction of which is partial. For the sanction of the Utpatti Vidhi is the certainty of a reward or benefit which is beyond the reach of a man's ordinary efforts, while the sanction in the case of a Niyama is some benefit which a man can himself secure by ordinary effort and is thus only partially cogent. In fact, in observing a Niyama, one, to a great extent follows his own convenience; as for instance, in the Niyama given below :

द्वादश्याम् पारयेत् ।

"Take food after the fasting of the eleventh day of the moon."

Parisankhyâ is a rule, the authority of which is found in

other Shâstras, and is a matter more or less of common experience. It is literally an enumeration. It is an enumeration of certain categories of things declared as fit or unfit. So it is in the nature of a recommendatory rule.

पञ्चपञ्चनखाः भक्ष्याः ।

"One may eat the flesh of such creatures as tortoise, ect., having five divisions in their claws." Some say Parisankhyâ implies a prohibition of all things, other than those indicated. But this has been properly refuted on strong grounds, among others by Shabara. We shall come to the examination of the question in due course. Suffice it to say here, that Jaimini puts Parisankhya as a mere synonym of Arthavâda.

He says :

परिसंख्या ।[1]

अर्थवाद् वा ।[2]

This could not be the case if Parisankhyâ was an implied Nishedha Vidhi.

It would be, perhaps, too much to say that the difference between Vidhi and Niyama is the same as between a mandatory rule and a directory rule. But there can be no doubt that in a great measure, Vidhis and Niyamas respectively correspond to mandatory rules and directory rules, while the Parisankhyâ is merely a recommendatory rule and is hardly within the definition of a Vidhi. To be more precise, a Niyama is a rule partially directory and a Parisankhyâ is a rule wholly directory, founded on some one or other of the ordinary branches of knowledge. There is another classification of Vidhis according to their purpose and application.

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[1] Jaimini I. ii. 42. [2] Jaimini I. ii. 43.

These are :—

(.) Utpatti Vidhis including Samânas.

(2) Viniyoga Vidhis.

(3) Adhikâra Vidhis.

(4) Proyaga Vidhis.

(1) Utpatti Vidhis and Samânas have already been explained. The following are instances of Samânas (co-ordinates)

स्वर्गकामो ऽग्निहोत्रं यजेत ।

स्वर्गकामोदर्शपौर्णमासौ यजेत ।

Of the samanas Darsapaurnamâsi Yajna is taken as a typical or model Yajna

प्रकरणं तु पौर्णमास्यमूरूपावचनात् ।[1]

A detached passage describing a detail is to be read into the Paurnamâsi, because the details of this Yajna are left open.

(2) The Viniyoga Vidhis sometime also called Guna Vidhi, represent the means by which a Yajna enjoined by a Vidhi is to be performed, such as Dadhnâ Yuhoti. (By means of curdled milk carry on the fire invocation.) The Mantras, stimulate the practice of a Vidhi in the shape of Niyamas), they are thus virtually of the nature of Viniyoga Vidhi, although apparently some distinction is made between a Mantra and Viniyoga Vidhi. Laugakshi Bhâshkara in the Artha Sangraha, thus speaks of the Mantras and Niyamas. I give the passage from Dr. Thibaut's translation. "Mantras serve to recall to memory the matters connected with the sacrificial performance. By this their property of recalling to memory the matters mentioned, they have a purpose, and it is not to be supposed that their enunciation merely tends to produce some unseen result, as it would be improper to

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[1] Jaimini II. ii. 3.

assume merely an unseen result while a visible result (in this case the circumstance of the performer of the sacrifice being reminded of certain things) exists. Nor can it be maintained that the recitation of the Mantras is purposeless, because the visible end of reminding one of certain things can be obtained by other means also (as for instance the Brâhman passages of the Veda which would point out the divinities etc., of the sacrifice even without being combined with the Mantra passages) ; for (the exclusive use of the Mantras for the purpose) is founded on an injunction of a necessary arrangement (Niyama Vidhi) according to which, the mentioned matters are to be recalled to memory by means of the Mantras only (not by any other means)."

(3) Adhikâra Vidhis are mandatory rules fixing the qualifications of the persons competent to undertake the fulfilment of Utpatti Vidhi ; such as Swargakâma yajeta, which has a double character (one who has a desire for a heavenly life can perform and is to perform the Utpatti Vidhi.) The subject of Adhikâra Vidhi is discussed fully in Book vi of the Mimânsâ Sutras.

(4) Prayoga does not imply any particular mandatory rule as Laugâkshi observes in his book. It consists of an adjustment of all the rules connected with the performance of a Yajna, so as to make its performance speedy and complete. It is in fact, the performance of a Yajna enjoined by a particular Vidhi in its full and complete form. For instance in the case of the Darsapaurnamâsi Yajna called the Prakriti or the model for the rest, the following are the particulars as shortly put by Colebrooke. "It is accompanied more specially at the new moon, with an oblation of whey from new milk. Accordingly the Yajur Veda begins with this rite. It comprehends the sending of selected cows to pasture after separating their calves, touching them with a leafy branch of

Palâsha cut for the purpose, and subsequently stuck in the ground in front of the apartment containing sacrificial fire, for the protection of the herds from robbers and beasts of prey. The cows are milked in the evening and again in the morning ; and from the new milk, whey is then prepared for an oblation.'

Sometimes the word Prayoga is also used to mean usage or sanctioned custom. In fact a Prayoga Vidhi is often crystalised in the shape of a usage or custom. It will be observed that the Utpatti Vidhi is the principal or primary Vidhi and others are auxiliaries. So the former is called the Prodhâna and the latter Anga.

I have entered into the details of the Viniyoga and Prayoga Vidhis at the risk of being tedious, because a full understanding of them will be necessary in classifying the principles of interpretation as discussed by the Mimânsâ writers.

I premised four preliminary topics ; namely, that of the division of the contents of the Vedic code ; that of the divisions and classifications of the law contained therein ; that of the means by which the rules of law are established ; and that of the principles by which references and cross-references are regulated. Of these I have gone through the first two. Now I proceed to the third.

Shesha or accessory.

I have already shown that the Vedic Law starts with what is called the Utpatti Vidhi, as Swargakâma Yajeta as indicating the main object of the wholething, and that in applying this, many things are introduced and added to it, which are called its Shesha or accessories. For instance, the main rule forming the basis of the Darsapaurnamâsi Yajna is simply

स्वर्गकामो यजेत् पौर्णमास्याम ।

"one must pray and sacrifice at the new and full moon for heavenly bliss." But this injuction, in its application to practice, involves many a detail as we have seen from the extracts made on the subject. These details all constitute the Shesha. But what would be the authority of these details, unless each of them could be supported by a Viniyoga Vidhi or applicatory command in the shape of a rule of imperative law?

Accordingly Mimânsâ writers lay down six means by which such Viniyoga Vidhis are made out and established. These means are rules of construction as distinguished from the rules of interpretation, for construing is not the same thing as interpreting. However, these principles of construction are treated in the third book of the Sutras. The later Mimânsâ writers give them a prominent place.

Applicatory rules how established.

Lougâkshi Bhashkara deals with them as follows :—

" Injunctions of this kind (Viniyoga) are assisted by six means of proof, viz., direct statement (Sruti); power (Linga); sentence of syntactical connexion (Vâkya); interdependence (Prokarana); place or order (Sthânam); name (Samâkhyâ)" (Dr. Thebaut.)

" Applicatory injunctions assisted by these six means of proof intimate subsidiary relation, the subsidiary position of something consists in its being accomplished by some agent engaged in the pursuit of some other result (so for instance the Proyâjas are performed by a sacrificer offering the new moon sacrifice with a view to obtaining paradise). The same subsidiary position is expressed by the term "Parârtha" meaning existing for the purpose of something else."

Then Bhâskara defines Sruti as follows :—

तत्र निरपेक्षः रवः श्रुतिः ।

To understand properly this word Sruti as used here is of the greatest importance. In a generic sense Sruti, means all statements contained in the Vedas. But here it is used in a special sense—a sense in which Jaimini uses the word frequently. Sruti as defined here, in the first place refers to Viniyoga Vidhis. In the second place, it does not include loose and vague statements which do not constitute an express proposition of law, or an express proposition of some incident of law; that is to say it does not include such statements which by their own force are not capable of laying down a clear and distinct rule of law, but which depend upon other words and considerations to bring them under the category of law. Sruti in short is an express and authoritative proposition of law :complete in itself, When therefore an applicatory rule is embodied in a Sruti, there is no need of construction although there may be need of interpreting the terms of the Sruti. This interpretation is literal as will be subsequently shown.

Srutra explained.

But as regards the other five means of making out a Viniyoga Vidhi, they are more or less based upon principles of presumption and construction. Out of statements which are more or less loose and vague, a definite rule is made out, by one or other of these five inferior means. At the head of them is the principle of Linga. Bhâshkara defines it very briefly as is usual with him, and his definition is therefore very obscure. He defines it thus

शब्दसामर्थ्यं लिङ्गम् ।

"The force of a word is Linga." But from the illustration given the meaning becomes clear. Linga is the indication which the predicate of an affirmative sentence has, in showing that the act forming the predicate, is obligatory on the

actor. In short to indicate that, the sentence though in an affirmative form, indicates a sense of duty, there being one or other parallel passage indicating a like duty For instance " I cut grass for the seat of gods"

वर्हिर्देवसदनं दामि ।

indicates one should cut *kusa* grass for the seat of gods, " I cut grass for the seat of the gods" is a co-relative of the command "one shall cut grass for the seat of the gods" although such a command may not be found in this particular form, but commands of a similar nature are met with. Hence the particular command is presumed.

The Linga is one of the principal means by which an affirmative sentence is read as an injunction. The next means of construing an applicatory Vidhi out of vague and loose statements is called Vâkya, which is defined by Bhâshkara to be context.

समभिव्याहारो वाक्यम् ।

A Vâkya generally means an affirmative sentence the nominative of which is in the third person ; where from the context of the several clauses of such a sentence a duty is indicated, the Vâkya, is to be read as an applicatory Vidhi. For instance, the passage " he whose sacrificial ladle is made of *parna* wood, hears to evil sound" as connected with the clause, " by means of carrying in it the oblation etc.," is taken to imply that one should make his sacrificial ladle with the *parna* wood.

Then the third means is Prokarana which Bhâshkar defines with his characteristic brevity to be interdependence.

उभयाकाङ्क्षा प्रकरणम् ।

But its meaning is amply shown by the Jaimini Sutras. It means that where a principal injunction is stated without any

mention of the necessary details, and detached statements which would fit in with the injunction appear in other places, those detached statements should be read as applicatory Vidhis to complete the defective principal injunction. It should be noted here that, if such detached statements to fill up the gap of the defective Vidhi, are not found anywhere else, then a reference should be presumed to the details of the Darshapaurnamâsi which is the standard and model of all Yajna.

The next two means are called Sthâna and Samâkhyâ. I may generally say with regard to these that, the position or order a passage indicates an applicatory Vidhi in some cases, and that the parts of a compound word carefully considered, sometimes, point to an applicatory Vidhi.

In concluding this part of the subject, it should be stated that the force of these rules of construction, is diminished in the descending order, that is, the force of the principle of Linga is stronger than that of Vâkya and so on. This is expressly stated by Jaimini.

श्रुतिलिङ्ग वाक्य प्रकरण स्थानसमाख्यानाम समवाये पारदौर्ब्बल्यम् अर्थ विप्रकर्षात् । III. iii. 14.

Atidesha or reference.

I now proceed to the topic of references and inter-references. These subjects are, treated in the latter half of the treatise from book vii to xii (both inclusive). Atidesha is the term denoting reference. I have already explained to you that the Darsapaurnamâsi Yajna is regarded as a model. It is called. Prakriti as representing the nature of the Utpatti Vidhi. But there are other Yajnas enjoined, without mention of details as to the mode of their performance. The details are to be taken from the details of the Prakriti to which they are supposed to refer. This is called general Atidesha, and the Yajna formed by such

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Atidesha is called Vikriti and sometimes Samâna. When the reference will not hold good to the Darshapaurnamâsi but is specially indicated to some other Yajna, such as Soma Yajna, the Atidesha is called special. References are gederally treated in books vii and viii respectively. Our present law of civil procedure provides general rules of procedure which are also adopted in miscellaneous cases by express reference or otherwise. The Atidesha, of old. is of a similar character.

Uha and Vadha.

Now this subject of Atidesh immediately leads to two other principles, of Uha and Vâdha. They are respectively treated in the ninth and tenth books. Uha means that where a Mantra applied to the Model Yajna is to be extended to another Yajna, it must be adopted to that other, *mutatis mutandis.* The question of Bâdha arises, where a Prakarana or Prayaja, that is a sub-ceremony, is to be introduced, from the Prakriti into a moulded or Vikrita Yâga, the injunction for which is not complete. All the sub-ceremonies are not to be bodily brought in. Such of them as are inconsistent with the injunction of the new Yâga and as such are called Bâdha must be omitted. These two principles though elementary in their character are of vital importance to the subject of interpretation. When one part of a document is defective, and the defect is to be supplied from another part, these two principles become of the greatest importance. Then there are two other topics called Tantratâ and Prasanga, which are respectively dealt with in the eleventh and twelfth book. In the Adhikarna Kaumudi they are treated under the heads of Tantra Nyâya and Prasanga Nyâya. Both tend to secure economy of procedure.

The Tantra Nyâya means that where there is one condition common to a whole series of observances, if the condi-

tion is fulfilled with regard to one that is sufficient for all. For instance, when a man has failed to do several duties at their proper time and the same penance is prescribed for the delay in each case, the penance need not be repeated, but once done the man is free to have the benefit of all the duties done out of their time. Prasanga Nyâya means that where one large oblation involves another in it, the man need not perform the latter separately. It is enough if he performs the larger obligation. This principle is the same as where a man is punished for murder, he need not be punished for hurt. These two principles, however. have little bearing upon the question of interpretation.

Mimansa the Logic of law.

I think now, I have sufficiently explained the fundamental principles of Mimânsâ Jurisprudence, which it is necessary to understand, in order to follow clearly the principles of interpretation laid down by Jaimini and his followers, specially with regard to the particular cases which have been examined by them and as to each of which they have formulated a particular principle of interpretation. Mr. Colebrooke says "The Logic of the Mimânsâ is the Logic of the law ; the rule of interpretation of civil and religious ordinances. Each case is examined and determined upon general principles : and from the cases decided the principles may be callected. A well-ordered arrangement of them would constitute the philosophy of the law : and this is in truth what has been attempted in the Mimânsâ."

The difficulties which the Vedas present regarding interpretation, are so various that they may be said to exhaust all possible cases of interpretation. Many of Jaimini's Sutras do not expressly refer to any particular passage of the Vedas. There are only some which make such references In other cases Jaimini's Sutras are of a general character

and the commentators have hunted out passages from the Vedas, placing one or more of them under each of the Sutras stating, that in framing the Sutras, the author had such and such passages in view. But in reality it is very doubtful whether in framing such of the Sutras as are worded generally and abstractedly, the author had any particular passage in view at all. As it is now, there is hardly any Adhikarana to which some passage has not been attached as its subject-matter. The result is that all the Adikaranas have been specialised, and the Nyâya or principle of every one of them is a speciai Nyâya or special principle named after some word of the passages.

Thus the name gives no idea of the nature of the principle. In this way, the Nyâyas or principles of interpretation which have been enunciated, form a multitude, with hardly any arrangement or classification. Though Mr. Colebrooke thought that a classification was necessary, he did not attempt it. Leaving these Nyâyas arising from the interpretation of the passages of the Vedas aside for the present, I shall now take up the Adhiharanas or Nyâyas which specially refer to the subject or the Smriti Law and the customary law.

Maxims regarding Smriti Law.

These Nyâyas with regard to the Smriti law and customary law are found in the third chapter of the first book. It has already been stated that the Smriti law and the customary law are appealed to by Jaimini as constituting one Pramâna (authority) among others of Dharma (duty), though themselves deriving their authority from Vedic Vidhis. Of course, if they conflict with Vedic Vidhis, they must yield to those Vidhis. The more important question for the purpose of interpretation is that arising when the Smritis themselves differ, or the provision of a Smriti differs from a prevalent custom.

The following Nyâyas or Adhikaranas bear upon the subject.

The third Adhikarana of ch. III. bk. I is called the

दृष्टिमूलक स्मृत्यप्रामान्यधिकरणम्।

(invalidity of what is based on grass considerations) and is indicated by the Sutra हेतुदर्शनात्। This Adhikarana directly bears on the question whether Sruti is to be presumed to have a Vedic basis or not, and lays down that no such presumption is to be made where the reason or object of the Smriti has no connection with a spiritual benefit, but on the contrary proceeds upon some motive inconsistent with spiritual benefit. Thus the Kalpa Sutra says "Adhwaryu takes the cloth prescribed to be worn in the Visarjana Homa," This is not to be taken as an imperative Vidhi presumably supported by the Vedas, for here reason is given for the Smriti, which is not consistent with spiritual benefit or the sanction of Apurva. From this Adhikarana it follows that where two Smritis conflict and one of them is free from this objection and the other is not, the former will prevail. And then if both of them be free from the objection, then in accordance with Gautama and Apastamba one may adopt either of them optionally. And if the number be more than two, the views of the majority would prevail.

The next Adhikarana is called the Adhikarana about giving effect to facts (पदार्थ प्राबल्यम्). In this the opponent is made to say, "then if everything is to be limited by the Shâstras, (*i. e.* by spiritual benefit) in that case the fact of an unrevealed rule even if not disapproved by the wise and good would be of no avail."

शिष्टाकोपेऽविरुद्धम् इति।[1] न शास्त्र परिमाणत्वात्।[2]

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[1] Jaimini I. iii. 5. [2] Jaimini I. iii. 6.

The answer is things which have become a practice are valid independently of the reason or motive which might have brought them into existence. The principle herein laid down forms the backbone not only of the customary Hindu Law, but also of many of the Smriti rules. For even in the case of a Smriti rule, for which a commercial motive is stated and which by the principle just before stated would not have the benefit of presumption of being derived from the Vedic Law, it would be perfectly valid under the principle now enunciated, if it has been long in practical application and has thus become a usage.

Then again, supposing there is a usage which is not to be found in any written Smriti, but which is not disapproved by the good and the wise, then also it becomes a valid rule of law by this Adhikarana. In this latter case, according to Vrittikâra Upavarsa, first a Smriti is to be presumed, and then a Sruti in support of that Smriti.

In connection with the subject of the presumption, that an unrevealed written rule of conduct, may be presumed not to be in conflict with revealed law, and hence to have its source in that law, it should be stated that this is not to be extended to the precepts of heterodox writers such as the Bouddha and Jaina writers for the simple reason that these writers do not own the authority of reaveled law at all. The discussions of the commentators on this point may be given in the language of Colebrooke as follows :—

"The Sâkyas (Buddhas) and Jainas (Arhatas) as Kumaril acknowledges are considered to be Khatriyas. It is not to be concluded he says, that their recollections were founded upon a Veda which is now lost. There can be no inference of a foundation in revelation, for unauthentic recollections of persons who deny its authenticity. Even when they do concur with it, as recommending charitable gifts and enjoining

veracity, chartity and innocence, the books of the Sâkyas are of no authority for the virtues which they inculcate.

"Duties are not taken from them. The association would suggest a surmise of vice, tainting what else is virtuous. The entire Veda which is directed to be studied is the foundation of duty, and those only who are conversant with it are capable of competent recollections."

This Padârtha Prâbalya Adhikarana supplies another means of discriminating between the authority of one Smriti passage and another. If one of the passages is found in practical application and the other not, the former is of superior importance. Regarding the subject of usage as dealt with in this Adhikarana, Colebrooke has the following :—

"Usage generally prevalent among good men and by them practised, as understanding it to be enjoined and therefore incumbent on them, is immediately, but not directly, evidence of duty : but it is not valid, if it be contrary to an express text. From the modern prevalence of any usages there arises a presumption of a correspondent injunction by a holy personage who remembered a revelation to the same effect. Thus usage presumes a recollection which again presupposes revelation. Authors however have omitted particulars, sanctioning good custom in general terms : but any usages which is inconsistent with a recorded recollection is not to be practised, so long as no express text of scripture is found to support it."

The next Adhikarana is called Sâstra Prasidha Prâmânya (the validity of the usages recognised by Shâstras). The Adhikarana is introduced by the following suggestion of the opponent, In the usages and practices (referred to in the preceding Sutra) there being no conflict (with the Vedas) they will be of equal rank and inconsistent with each other,

the answer is, that 'there can not be any inconsistency as either they must be contained in the Shâstras or must be founded on them. This Adhikarana distinctly explains that where an usage is not contained in the Shâstras, that is does not appear in a written Smriti, it must be at least consistent with the Shâstras, that is, it must be consistent with the principle of spiritual benefit, in order to be valid. In short in such a case the Smriti must be first presumed, but if there be already a Smriti in conflict with the usage such a presumption is barred. Under this Adhikarana some writers have raised the discussion whether the practice in some part of India of marrying the daughter of one's maternal uncle, can be supported as a valid usage.

The commentators extend the principle of this Adhikarana to the customary sense of terms used. Under this Adhikarana they raise the question, where the same word is used in one sense in the Saskrit, and in another sense in the barbaric tongue, should the customary sense in the barbaric tongue be adopted or the pure Sanskrit sense? For instance the word Java in Sanskrit means barley, but in the barbaric tongue a plant named Priyangu. Which of the acceptations of the word is to be adopted? The answer is in favour of the adoption of the Sanskrit acceptance being in accordance with the व्याकरण शास्त्र (grammar).

With great deference to the venerable commentators, it appears that the discussion about the meaning of words is misplaced under this Adhikarana, which is an Adhikarana regarding usages (प्रयुक्तानि); the discussion about the meaning of words would come in properly under the Adhikarana ix. and x. ch. iii. bk. I.

(साधुपदप्रयोग नियम अधिकरण A लोकवेदयो: शब्दार्थैक्यमधिकरण)।

The same remark applies with greater force to the discussion regarding the use of the words *Pika*, *Támarasa*, etc., having one sense in the Sanskrit and another in the Mlechha languages, as introduced under the following Sutra. In fact, the Adhikarana founded upon the following Sutra itself seems to have been too limitedly named.

This Sutra runs as follows:—

चोदितन्तु प्रतीयेताविरोधात् प्रमाणेन । [1]

The clear meaning of the Sutra is "practices and usages, which appear as enjoined or commanded must prevail, they not being in conflict with (any express Vidhi) by any evidence." Both the preceding and the succeeding Sutras deal with the question of usages (Prayoga) and the word Chodita (चोदित) itself means a special class of usages, which are mentioned in the Vedas, as if sanctioned by a command, although there is no express command sanctioning it.

Vedic usages.

In bk. III. ch. i. Sutra 15, we find

चोदितेतु परार्थत्वात् यथा श्रुति प्रतीयेत ।

"practices sanctioned (by Veda) being dependent (on some implied) command must prevail according to Sruti.

There can be no difficulty about the word Chodita. This chapter (ch. iii. bk. I.) deals with three classes of usages : (i) Usages appearing in written Smritis. (ii) Usages approved of by wise and good men, but not appearing in the written Smritis. (iii) Usages which appear in the Vedas themselves, but not with any express Vidhi to support them. Not being supported by any express Vidhi they are put in the same class as Smritis. Now, this Adhikarana lays down that with regard to the third class of usages, no question

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[1] Jaimini I. iii. 16.

arises as to conflict or non-conflict, as on the face of them there is no conflict with any Vedic Vidhi.

In some of the Vedic usages there occur such words as Pika and Tâmarasa. These terms are supposed to be Mlechha terms, Pika corresponding to the Latin Picus. It means a black cuckoo. The commentators explain that the usage mentioned in the Veda containing such barbaric terms must be given effect to without any attempt to eliminate the terms. For instance, in the passage containing the word Pika, the practice of sacrificing a black cuckoo at night must prevail.

The next Adhikarana relating to the Prayoga Shâstra which is understood to include the Kalpa Sutras of Baudhâyana and Apastamba, may be skipped over. According to Jaimini, to quote Colebrooke, "the Kalpa Sutras are neither a part of the Veda nor possess equal or independent authority. It would be a laborious enterprise to prove a superhuman origin of them; nor can it be accomplished, since contemporaries were aware of the authors being occupied with the composition of them."

The next Adhikarana is of the greatest importance, with regard to the interpretation of customary law and the application of usages. It is called

सामान्या श्रुतिकल्पनाधिकरणम् ।

i. e., the Adhikarana for presuming general Vidhis in support of customs and usages. It is also popularly called Holâcâ Nyâya, Holâcâ meaning the spring festival named Holi. I shall first of all give the Sutras composing this Adhikarana and then consider their effect as discussed by the commentators. The Adhikarana begins with the suggestion of the opponent (if a presumption is necessary), a presumption limited to the usage would do to make it authoritative.

Nature of the Vidhi to be presumed.

अनुमान व्यवस्थानात् तत् संयुक्तं प्रमाणं स्यात् । [1]

The opponent means to say that if there be a usage for the Holi or spring festival for the eastern part of India it may be simply presumed that the Veda enjoins that the Holi festival should be performed in the east only.

The answer is

अपि वा सर्व्वधर्म्मः स्यात् तन्न्यायत्वात् विधानस्य । [2]

" No, every act of duty must follow the proper shape of an injunction (to which it corresponds)."

दर्शनात् विनियोगः स्यात् । [3]

" The application of the injunction must be guided by the facts observed."

लिङ्गभावात् च नित्यस्य । [4]

" Again there is no modifying indication of the eternal Vidhi "

आख्या हि देश संयोगात् । [5]

" It may be named after a particular place with which it may be associated."

न स्यात् देशान्तरेषु इति चेत् । [6]

" If you say that it cannot apply to another place."

स्यात् वाऽऽख्या हि माथुरवत् । [7]

" Why not, a name is a name from association, just as one would say this is of Mathurâ."

कर्म्मधर्म्मो वा प्रवणवत् । [8]

" The act of duty has a direction as in the case of a sloping place."

तुल्यं तु कर्त्तृधर्म्मेण । [9]

" An act of duty remains the same by reason of duty being a virtue of the person."

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[1] Jaimini I. iii. 15.
[2] Jaimini I. iii. 16.
[3] Jaimini I. iii. 17.
[4] Jaimini I. iii. 18.
[5] Jaimini I. iii. 19.
[6] Jaimini I. iii. 20.
[7] Jaimini I. iii. 21.
[8] Jaimini I. iii. 22.
[9] Jaimini I. iii. 23.

All these Sutras lead to the conclusion that where there is a local usage, the presumption that is to be made, is not of the existence of a local Vidhi. The Vedas know no local Vidhi. According to the universal character of the Vedas, the Vidhi that is to be presumed will be a general Vidhi not restricted to any place. But a general Vidhi is not to be applied in all places and with reference to all persons but according to the facts observed in each case. Then it comes to this that the Vidhi will be general, but the application may be local. But even when the application is lo al. duty being a personal obligation, it follows the person wherever he goes.

Thus if the festival of the Holi prevails among the people of the east, and if they migrate to the west, there it will also be their duty to celebrate that festival. Accordingly a custom is never strictly local. It is in theory universal but in practice and application it may belong to a particular community and a particular family. The commentators generally support this conclusion although the particular lines of discussion followed by them are not very clear as to their drift. But even as regards the restrictions to particular classes they are of a changeable character. The people belonging to a class may in course of time give up one set of usages for another. The views of the commentators on this point are thus given by Colebrooke: "Nor are rituals and law institutes confined to particular classes though some are followed by particular persons preferably to others; as Vasista by the Bahvrich Sâkhâ of the Rig Veda; Gautama by the Gobhiliya of the Sâma Veda; Sankhyâ and Likhita by the Vajaseneyi; and Apastamba and Baudhâyana by the Taittriya of the Yajur Veda. There is no presumption of a restrictive revelation, but of one general import. The institutes of law and rituals of ceremonies were composed by authors belonging to particular Shâkhâs, and by them taught

to their fellows belonging to the same class, and have continued to be current among the descendants of those among whom they were so taught."

Express Text Law and Practice Law.

From what has been shown it is amply clear that the subject-matter on which the system of interpretation taught by Jaimini bears, divides itself into two branches. The express and categorical propositions of law are called Srutis. The statements of usages and practices, either definite and specific or more or less of a vague and loose character, are called Prayoga or Shesha or Karma. On the face of it, the division above indicated, is not like the division of modern times into statute law and common law with which English lawyers are familiar. Yet essentially the division of Sruti and Prayoga corresponds with the division of statute law and common law. The express and categorical Srutis have this character in common with rules of Statute law that they are in set language and there is no question about their authoritativeness.

The statements found either in the Vedas or in the Smritis regarding usages and practices agree in this with the common law, that they form the expressions and acts of persons who are supposed to have been acquainted with the law. Of course, in the case of the Vedas theoretically no human agency is recognised, but practically as regards usages and practices no distinction is made between the Smritis and the Vedas. I have already shown that the word Sruti has two meanings—the one general and the other special,—and I have also shown that in the special sense it is an independent express statement of law which is authoritative in itself, and is not to be derived by presumption or otherwise from any other statement of superior authority. On the contrary it imparts authority to other statements.

A Sruti may be either Vidhi Sruti or it may be Guna Sruti ; in the former case it is the imperative rule of law itself ; in the latter case it is a declaration of some incident to that rule. Prayoga Vâkya or Shesha is merely the statement of an act or usage. It is in the nature of case law, and in the case of the Smritis admittedly proceeding from persons who had no authority to make law but to expound it. Theoretically it is not so in the case of the Vedas but practically there is little difference.

Importance of the division into express and practice law.

The importance of observing this bifurcation of the subject-matter of interpretation is very great, because the character and nature of the rules of interpretation themselves vary with this difference in their subject-matter. In the one case the rules are strict, and are confined to a consideration of the language and if necessary, of formal logic ; in the other case, the rules are of a wider character, and involve reasonings and inferences connected with matters of common experience. In fact, the former class of rules may be called strictly the rules of interpretation, the second class rules of construction in the sense of making out something consrructively. Shortly, it may be said that the literal principle governs the one, and the rational principle the other.

Examples of some principles relating severally to both.

The principles of interpretation and construction dealt with by the Mimânsakâs, with reference to particular passages of the Vedas, are exceedingly numerous and of a variety of character. Reserving a fuller consideration of them for another lecture, I shall mention here only a few principles, by way of example with regard to each of the two divisions of the subject-matter indicated above, which to save language, I may roughly call matter of Sruti (express law) and matter of

Prayoga (implied law) respectively ; the former being matter of a statutory nature and the latter of a common law nature.

I. As to interpreting express texts, the first thing for consideration is the manner of approaching them. The Mimânsakas have taken a great deal of pains in settling a principle upon this matter. All modern Mimânsâ-writers begin with this subject. They lay down that the commands of the Vedas should be approached with what is called Bhabanâ, which means a cogitation of the mind to the effect that what is commanded, must be. This Bhâvanâ is of two kinds—Shâbdic Bhâvanâ and Arthic Bhâvanâ : realisation of the force of the command, and the realisation of the benefit it would confer. So the first principle of interpretation is that, one should approach the subject matter with an earnest attention first to the words of the command, and then to its beneficial intention.

II. The leading principle of interpreting texts literally is what is called the Gârhapatya Nyâya. It means that the text must be accepted as it is. Kumârila Bhatta expresses this principle by the sloka, यथा वचणं हि वाचनिक। (See Raghu Nandan's Ekâdashi Tattva page 45). The name of the Nyâya is derived from a Sruti which runs as follows,

निवेशनः संगमनो वसुनाम् ईति ऐन्द्र्या गार्हपत्यम् उपतिष्ठते ।

"One should worship Gârhapati by chanting the Mantra addressed to Indra consisting of the words 'Nibeshana, etc." With reference to this passage Jaimini suggests this objectien as from an opponent,

वचनात् तु अयथार्थ्यम् ऐन्द्रीस्यात् ।[1]

"From the very text the term Aindri here has a wrong sense (and must therefore be struck out)." The gist of the

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[1] Jaimini III. ii. 3.

objection is that a Mantra addressed to Indra cannot properly be used for worshipping Gârhapati and, therefore, the text should be read eliminating the word Indra. The author answers that the text should be taken as it is, saying that the clause 'by this Mantra' is an incidental clause and cannot affect the commanding portion of the sentence. As by the rules an incidental clause cannot affect the commanding clause. No doubt Jaimini gives a particular reason in this case, but subsequent writers state the principle unqualifiedly that an express mandatory text must be taken as it is, and can not be read differently. They go so far as to say that where there is an express statement 'he sat on the plaintain leaf and ate off the ground', the order of the words cannot be changed so as to make it 'he sat on the ground and ate off the plaintain leaf', although this would appear consonant to sense.

III. The next important principle of literal construction is that, in the presence of an express text upon a given point, it is not allowable to entertain any proposition upon the same point arrived at, by processes of constructive implication. This is expressly laid down in Sutra 14, ch. iii, bk. III, and is called the maxim of the comparatively greater force of Srutis, etc.

IV. Then, again, although there may be a statement of the value of a Sruti in the shape of an Arthavâda, it is expressly laid down that, any statement of the grounds of a Sruti cannot affect the meaning of the words composing the Sruti. This is laid down among other Sutras, by Sutra 41, ch. i, bk. iv. वचनैर्हि हेत्वसामर्थ्यं.

V. Further, the predominant character of express Vidhi texts, is brought out by the principle that, prayers and hymns derive their efficacy from relationship to express Vidhi texts. See Sutra 16 and 24, ch. i, bk. ii.

VI. The number and gender expressed in Sruti texts, of words indicating commands, must be literally taken as they are. This is laid down in Pashwekatwa maxim.[1]

Thus the terms of an express Sruti cannot be interfered with and it must be literally construed. Where, however, the meaning of the terms used in a Sruti is not free from ambiguity, their meaning must be determined with reference to context. So far Srutis are liable to construction by context.

VII. The broad rule regarding the meaning of words is laid down in what is called the Barhi Nyâya.

This Nyâya is derived from Sutra 1, ch. ii, bk. iii. The first part of the Sutra runs thus :—" A Mantra acquires its character as accessory by virtue of the force of meaning of descriptive words."

अर्थाभिधान सामर्थ्यात् मन्त्रेषु शेषभावः ।

Take for instance, the Mantra बर्हिर्देव सदनं दामि ।
" Oh ! grass, I cut (thee) for the seat of the gods."

Commentator Sabara in his remarks on this Sutra observes in effect 'that the term Barhi has two meanings : a primary meaning and a secondary meaning, as every word more or less has.' The sense of the word which is perceived as soon as it is heard is direct, Mukhya (मुख्य). That meaning again which is conceived by deliberation of its qualities in regard to other things, is indirect or secondary, Gauna (गौण). In the one case you take the sense indicated by the broad feature of the thing; in the other you take it in some sense indicated by a quality. This being the case, it must be taken that the words of a Mantra must be taken in a direct sense unless the contrary be shown by the context. Besides the Mantra quoted above, there is another in connection with the Darsapaurnamâsau Yâga. There the word is understood in

[1] Jaimini IV. i. 11 to 16.

a secondary sense, because the context there implies the secondary sense. So it will be seen that Barhi Nyâya, which is analogous to the Gârhapatya Nyâya, is another very important Nyâya. It, in short, means that the sense in which a word is used is to be determined by the context of the sentence.

As I have already said I shall not enter into any enumeration of a large number of Nyâyas bearing on the interpretation of Sruti laws in this place. So I proceed to give an idea of the Nyâyas bearing on the other branch of the law viz, the branch which consists of matters like those of common law. As I have already explained such matters are either not in the form of an express proposition of the law or not independently authoritative. They are only acts and expressions of savants well versed in law.

(I) The principles of construction already described under the names of Linga, Vâkya, Prakarana, Krama and Samâkhyâ mostly apply to matters of this description. All these principles of construction, Linga, Vâkya etc., are generally resorted to, in construing the usage and practice recorded in the Vedas either in the form of Stuti (hymns) or of Nigadas etc., to make an authoritative Vidhi out of something which is not on the face of it an express Vidhi. As regards matters of usage and practice outside the Vedas and thus wanting in independent authority, they are made authoritative by the presumption that some Srutis existed corresponding to them. But with regard to the similar matters contained in the Veda itself, the presumption is of a different kind, being derived from the context and meaning of passages.

(II) But there are certain principles of interpretation which are common both to the Vedic and to the Smârta usages. One such principle of interpretation is expounded

by Jaimini in two places. The one is called the Hetubadnigadâdhikarana[1] and the other is called Dristimulaka Smriti Aprâmânyam Adhikarana.[2]

In both these Adhikaranas or Nyâyas the principle enunciated is in substance this : An imperative Vidhi carries with it its own sanction ; it must be performed whether those to whom it is addressed understand its reason or not. But where an appeal is made to the reason of the persons tc whom it is addressed, not by way of commendation but as a ground, it ceases to be a Vidhi, as it then no longer would depend upon any sanction i.e. upon any power beyond the control of the men to whom it is addressed. The two Adhikaranas referred to, lay down, one in the case of the Vedas, and another in the case of the Smritis that where there is a direction containing temporal reasons, it is not an imperative rule of law, but it is something in the nature of either an adjunct to a Vidhi or of a mere appeal to the good sense of men. This is an important way of sifting what may be called the sources of customary law.

With reference to the two Adhikaranas, just mentioned, it should be noted, that our present British Courts, have had little opportunity of being familiar with them. In Beni Prasâd *vs.* Hardai Bibi, I. L. R. 14. All. page 67, which has been referred to at the very out set of this lecture, C. J. Sir John Edge, strongly relied, on the principle of the said Adhikaranas. In appeal, their Lordships of the Privy Council, seem not to have been prepared to rest their decision upon them, but they nevertheless observed, as follows :—

"It may. however, fairly be argued that one who, having the power to give an absolute command, gives an injunction not expressed in unambiguous terms of absolute command

[1] Jaimini I. ii. 26. [2] Jaimini I. iii. 4.

but resting on a reason, is addressing himself rather to the moral sense of his hearers than to their duty of implicit obedience. So far Vasishta's reason founded, as it is, on temporal and not on religious considerations, gives some, though not very strong, support to the respondent's theory." [1]

(III) In cases of conflict between Smriti texts, in favour of neither of which usage can be shown, the only means of getting out of the difficulty is to apply the test of reason or of good conscience or equity,

What the Dharmâ Shâstras of Gautama and Apastamba, as well as Mimânsâ works lay down regarding option, in cases of conflict between two authorities of equal force, has in effect the same meaning. The Agni Purâna in Chap. 253, Sec. 50 to 52, lays down the principle in words like the following—"A principle of equity should be deemed as a better authority in the conflict of the tenets of the law codes on a particular point, and a principle of good conscience should have precedence over an established usage of trade, or a principle of the science of economy."

In short, as regards the interpretation of law consisting of practice, what are called the principles of construction by context or beneficial construction, greatly hold good. Jaimini puts the essence of these principles of construction in the Vishwajit Nyâya, Sutras 10—12, Chap. III, Bk. IV, These principles will be dealt with in detail in the subsequent lectures.

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1 Vide Calcutta Weekly Notes Vol. iii., p. 449.